

The Honorable _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

PUNCHBOWL, INC., a Delaware
corporation,

Plaintiff,

v.

MOMENTO, INC., a Delaware corporation,

Defendant.

Case No.: _____

COMPLAINT FOR:

**(1) Federal Trademark Infringement,
Unfair Competition, and False Designation
of Origin Under 15 U.S.C. § 1125(a);**

**(2) Common Law Trademark
Infringement, Unfair Competition, and
Passing Off; and**

**(3) Violations of Washington Consumer
Protection Act, RCW Ch. 19.86.**

DEMAND FOR JURY TRIAL

COMPLAINT

Case No. _____

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1 Plaintiff Punchbowl, Inc. complains and alleges against Defendant Momento, Inc. as
2 follows.

3 **THE PARTIES**

4 1. Plaintiff Punchbowl, Inc. (“Plaintiff”) is a corporation organized under the laws of
5 the State of Delaware, with its principal place of business at 50 Speen Street, Suite 202,
6 Framingham, Massachusetts 01701.

7 2. On information and belief, Defendant Momento, Inc. (“Defendant”), the operator
8 of the website located at www.gomomento.com, is a corporation organized under the laws of the
9 State of Delaware, with its principal office at 113 Cherry Street, Suite 18364, Seattle, Washington
10 98104.

11 **JURISDICTION AND VENUE**

12 3. This action arises under the federal trademark statute (the “Lanham Act”), 15
13 U.S.C. § 1051 *et seq.*, and under the laws of the State of Washington.

14 4. This court has original jurisdiction over the federal trademark and unfair
15 competition claims pursuant to 15 U.S.C. §§ 1114, 1121, 1125, and 28 U.S.C. §§ 1331, 1338, and
16 1367.

17 5. Supplemental jurisdiction is proper for the state law claims under 28 U.S.C. §
18 1367(a) because the claims are so related to the federal claims that they form part of the same
19 case or controversy under Article III of the United States Constitution.

20 6. The amount in controversy between the parties exceeds \$75,000.

21 7. On information and belief, this Court has personal jurisdiction over Defendant
22 pursuant to RCW 4.12.025 (1) because the Defendant resides in this District.


23 8. On information and belief, venue is proper in this District pursuant to RCW
24 4.12.025 (3)(d) because the Defendant resides in this District.

FACTUAL BACKGROUND

PLAINTIFF AND THE MEMENTO MARK

9. Plaintiff is a premier technology company that develops online communications solutions for consumers, with a particular focus on celebrations, holidays, events and memory-making, sold as subscription-based services. With millions of users, Punchbowl also offers leading consumer brands the ability to reach their audiences through its platform on web and mobile devices. Plaintiff's communications services, comprised in part of online video-sharing services, event and celebration invitations and greetings cards, are enormously successful, have garnered widespread acclaim and recognition, and are used by individuals and corporations across the United States and around the world.

10. Plaintiff has millions of customers using its platforms located at PUNCHBOWL.COM, MEMENTO.COM, and associated mobile applications, and hundreds of thousands of consumers who have purchased the associated subscription services.

11. Since at least as early as June of 2021, Plaintiff has used the mark  memento (the "MEMENTO Mark") to market and sell a video platform that enables consumers to record, make, and preserve memories from significant life events and milestones throughout the United States and the world.

12. The MEMENTO Mark has been extensively advertised and promoted in various media in the United States, including online through the MEMENTO website (<https://www.memento.com>), paid media channels such as Google, and on social media sites such as Facebook, Twitter, and Instagram.

13. Plaintiff has devoted substantial time, effort, and resources to the development and extensive promotion of the MEMENTO Mark and the goods and services offered thereunder.

14. Plaintiff owns U.S. Trademark Application Serial Nos. 90/884,527 and 90/884,522 for the MEMENTO Mark for the following goods and services:

"[d]ownloadable software in the nature of a mobile application for use in producing multimedia recordings featuring text, audio, video, images and animations, allowing users to solicit, collect and combine individual multimedia recordings to create video messages

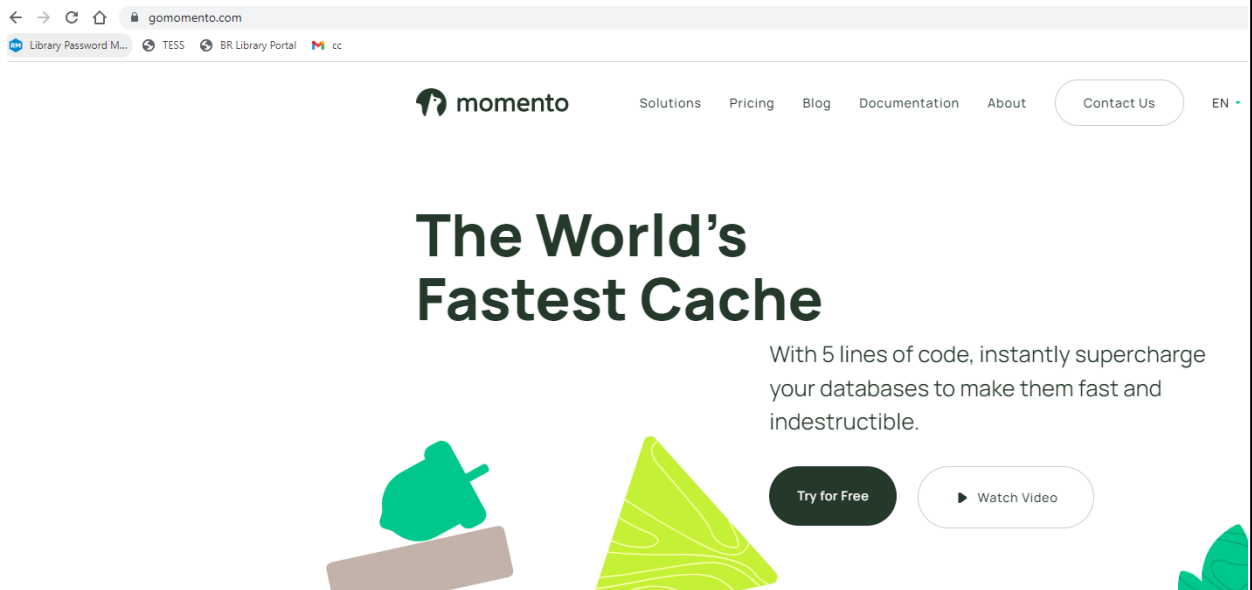
for friends and family, and enabling users to create and share user-generated video greeting cards” in **Class 9**; and

“software as a Service (SaaS) services, featuring software for use in producing multimedia recordings featuring text, audio, video, images and animations; Software as a Service (SaaS) services, featuring software for use in producing videos; computer services, namely, providing an online, non-downloadable application that allows users to solicit, collect and combine individual multimedia recordings to create video messages for friends and family; providing a website featuring technology that enables users to create and share user-generated video greeting cards” in **Class 42**.

DEFENDANT’S INFRINGEMENT OF THE MEMENTO MARK

15. On information and belief, Defendant is a corporation that provides “serverless caching” services under the mark MOMENTO (the “MOMENTO Mark”).

16. Defendant frequently uses the MOMENTO Mark standing alone. On information and belief, the original website used by Defendant to offer these services was located at <https://www.momentohq.com>. That URL now redirects to a website at <https://www.gomomento.com>. A true and accurate screenshot from Defendant’s website as of February 12, 2023 is copied below.



17. Defendant’s MOMENTO Mark is virtually identical to Plaintiff’s MEMENTO Mark, differing by only one letter in the beginning of the word. Further, Defendant uses the

MOMENTO Mark with highly similar font, stylization, and design elements to those as found in Plaintiff's MEMENTO Mark, as shown in the following side-by-side comparison:

Plaintiff's Mark:



Defendant's Mark:



18. Defendant's online technology services are offered under the MOMENTO Mark through the same marketing and trade channels and to the same class of consumers to which Plaintiff offers its online technology services under the MEMENTO Mark. Consumers of both Plaintiff's and Defendant's services are everyday consumers interested in using accessible technology on the Internet to enhance the technology they already use. Furthermore, both parties' respective services are offered and provided via the same channels of trade, namely, the Internet, including on popular social media platforms.

19. In November 2022, Plaintiff became aware that Defendant was operating the gomomento.com website and using the confusingly similar MOMENTO Mark.

20. In a letter dated November 11, 2022, Punchbowl informed Defendant of its valuable rights in the MEMENTO Mark and demanded that Defendant cease its use of the MOMENTO Mark and agree to other related conditions regarding its infringing use of the mark. In its response, Defendant refused to comply with Plaintiff's demands.

21. As of the date of this Complaint, Defendant continues to use the MOMENTO Mark for its online technology services. Defendant's failure to comply with Plaintiff's demands demonstrates a deliberate intent to continue to willfully infringe Plaintiff's rights in its MEMENTO Mark.

22. Defendant's unauthorized use of the MOMENTO mark is misleading and is likely to confuse consumers into mistakenly believing that Defendant's services are authorized by, sponsored by, or otherwise affiliated with or approved by Plaintiff.

23. Defendant's infringing use of the MOMENTO Mark is knowing and willful and is likely to cause confusion, mistake, or deception in the marketplace as to the source or origin of

1 Defendant's services and whether those services are endorsed by or otherwise affiliated with
2 Plaintiff.

3 **FIRST CAUSE OF ACTION**

4 **FEDERAL TRADEMARK INFRINGEMENT, UNFAIR COMPETITION AND
5 FALSE DESIGNATION OF ORIGIN UNDER 15 U.S.C. § 1125(a)**

6 24. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through
23 of this Complaint as if fully set forth here.

7 25. Plaintiff owns the distinctive, valid, and protectable MEMENTO Mark.

8 26. Defendant's use of the highly similar MOMENTO Mark in commerce to advertise,
9 offer and render Defendant's similar online technology services is without Plaintiff's permission
10 or authority and is in total disregard of Plaintiff's rights to control its trademarks.

11 27. Defendant's actions as described herein have caused and are likely to cause
12 confusion, mistake, and deception among ordinary consumers as to the affiliation, connection, or
13 association of Defendant with Plaintiff, as to the true source of Defendant's services, and as to
14 the sponsorship or approval of Defendant or Defendant's services by Plaintiff.

15 28. Defendant's acts have damaged and will continue to damage Plaintiff, and Plaintiff
16 has no adequate remedy at law.

17 29. Defendant's actions constitute trademark infringement, unfair competition and
18 false designation of origin in violation of 15 U.S.C. § 1125(a).

19 30. In light of the foregoing, Plaintiff is entitled to injunctive relief prohibiting
20 Defendant from using the MOMENTO Mark or any marks confusingly similar thereto, and to
21 recover all damages, including attorneys' fees, that Plaintiff has sustained and will sustain, and
22 all gains, profits, and advantages obtained by Defendant as a result of its alleged infringing acts
23 in an amount not yet known, and costs pursuant to 15 U.S.C. §1117, and prejudgment interest.

24 **SECOND CAUSE OF ACTION**

25 **COMMON LAW TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND PASSING OFF**

26 31. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through
27 30 of this Complaint as if fully set forth here.

41. Defendant's acts and conduct will cause actual, immediate, and irreparable injury to Plaintiff, to its goodwill and reputation, and to the public, and will continue to threaten such injury unless enjoined by this Court. But for Defendant's acts and conduct, Plaintiff would not suffer such injury.

WHEREFORE, Plaintiff requests the following relief:

A. That Plaintiff be granted preliminary and permanent injunctive relief under 15 § 1051, *et seq.*, and the inherent powers of this Court; specifically, that Defendant and all its agents, servants, representatives, employees, attorneys, parent and subsidiary corporations, assigns, and successors in interest, and all other persons acting in concert with Defendant, be permanently enjoined from: (i) using the MOMENTO Mark, or any other mark confusingly similar to Plaintiff's MEMENTO Mark, in connection with the marketing, promotion, advertising, sale, or distribution of any products and services; and (ii) from any other act of infringement of Plaintiff's MEMENTO Mark.

B. That Defendant be required to file, within 10 days from entry of an injunction, a statement with this Court signed under penalty of perjury certifying the manner in which Defendant has complied with the terms of the injunction;

C. That Defendant be adjudged to have violated 15 U.S.C. § 1125(a) for unfairly competing against Plaintiff by using a false designation of origin for Defendant's infringing products;

D. That Plaintiff be awarded Defendant's profits derived by reason of said acts, or as determined by said accounting;

E. That Plaintiff be granted prejudgment and post judgment interest;

F. That Plaintiff be granted costs associated with the prosecution of this action; and

G. That the Court grant Plaintiff such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues triable of right by a jury.

Dated: April 4, 2023

Respectfully submitted,

By: /s/ Christopher B. Durbin

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